STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee	UNPUBLISHED October 18, 2011
v	No. 299079 Saginaw Circuit Court
JACOB ANTONIO CORONADO, Defendant-Appellant.	LC No. 09-032660-FH

Before: M. J. KELLY, P.J., and FITZGERALD and WHITBECK, JJ.

PER CURIAM.

Defendant Jacob Antonio Coronado appeals as of right his jury convictions of second-degree fleeing and eluding, MCL 750.479a(4)(b), operating a vehicle while intoxicated (OWI), MCL 257.625(1)(a), and driving with a suspended license, third offense, MCL 257.904(3)(b). The trial court sentenced defendant, as a third habitual offender, MCL 769.11, to serve 55 to 120 months in prison for his fleeing and eluding conviction, and to serve concurrent terms of 90 days in jail each for his OWI and driving with a suspended license convictions. Because we conclude that there were no errors warranting a new trial, we affirm his convictions and sentences. However, for the reasons stated below, we remand this case to the trial court for the ministerial task of correcting defendant's judgment of sentence.

Evidence showed that, in February 2009, defendant drove past the site of an accident at a high rate of speed and nearly struck a firefighter. As a result, an officer on the scene of the accident pursued defendant and tried to pull him over. According to the testimony, defendant was at one point driving the wrong way on a one-way street, while at another was seen hitting a curb which forced his vehicle into a spin. The police officers eventually ended their pursuit due to the risk. Thereafter, a police officer observed that defendant's vehicle had rear-ended another vehicle and struck a utility pole. Defendant does not challenge the finding that he was driving intoxicated and with a suspended license.

On appeal, defendant argues that the trial court erred when it instructed the jury that "in this case the lawyers have stipulated that the defendant had a prior conviction of fleeing and eluding third degree, thus satisfying that element" of the offense. Defendant's position is that the prior conviction was not an element of the offense, but rather a basis for sentence enhancement, and that the disclosure of his prior conviction prejudiced his trial. This Court reviews de novo

the proper interpretation of a statute. *People v Martin*, 271 Mich App 280, 286-287; 721 NW2d 815 (2006). Likewise, this Court reviews de novo claims of instructional error. *Id.* at 337.

It is a felony in this state for the driver of a motor vehicle to "willfully fail to obey" a signal by a police officer directing the driver to bring his or her vehicle to a stop. MCL 750.479a(1) and (2). This statute—commonly referred to as the fleeing and eluding statute—provides for various punishments depending on the degree of the offense committed. If the driver commits the offense described under MCL 750.479a(1) and the violation causes a serious impairment of body function, or the driver has 1 or more prior convictions for first, second, or third-degree fleeing, or 2 or more prior convictions of fourth-degree fleeing and eluding, the driver "is guilty of second-degree fleeing and eluding." MCL 750.479a(4).

As structured by the Legislature, the fleeing and eluding statute plainly encompasses four separate offenses with varying elements. Indeed, the Legislature's statement that a driver is "guilty of second-degree fleeing and eluding" if the driver committed the offense stated under MCL 750.479a(1) in addition to one of the criteria stated under MCL 750.479a(4)(a) to (c) plainly requires the prosecutor to establish one of the additional criteria beyond a reasonable doubt—that is, the additional criteria are elements of the offense of second-degree fleeing and eluding. See *People v Grayer*, 235 Mich App 737, 741; 599 NW2d 527 (1999) (discussing the elements of third-degree fleeing and eluding and concluding that the additional criteria provided under MCL 750.479a(3) are elements under a plain reading of the statute).

Further, we conclude that defendant's reliance on *People v Weatherbolt*, 214 Mich App 507; 543 NW2d (1995), is misplaced. Unlike the statutory provisions at issue in that case, the fleeing and eluding statute does not mention enhanced sentencing, let alone specify that "a prior conviction shall be established at sentencing." *Id.* at 510. *Weatherbolt* also analogized the statutory provisions at issue to MCL 333.7413, which is clearly identified by its terms as a sentence-enhancing provision. *Id.* at 510-511. A similar analogy cannot be drawn here.

Defendant also argues that his judgment of sentence erroneously provides that the jury convicted him of second-degree fleeing and eluding under MCL 750.479a(4)(a), which involves fleeing and eluding causing a serious impairment of body function, when he was actually convicted of second-degree fleeing and eluding premised on a prior conviction. See MCL 750.479a(4)(b). The prosecutor concedes that defendant's judgment of sentence is inaccurate and agrees that it should be corrected on remand. Therefore, we remand this matter to the trial court for the ministerial task of correcting defendant's judgment of sentence to reflect that he was convicted of second-degree fleeing and eluding under MCL 750.479a(4)(b).

Affirmed, but remanded for a correction to defendant's judgment of sentence. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ E. Thomas Fitzgerald
/s/ William C. Whitbeck